

Federal Court of Australia  
District Registry: Australian Capital Territory  
Division: Fair Work



No: ACD47/2018

**SIMON ALEXANDER TURNER**  
Applicant

**READY WORKFORCE (A DIVISION OF CHANDLER MACLEOD) PTY LTD (ACN 088 288 037)** and others named in the schedule  
Frist Respondent

**ORDER**

**JUDGE:** JUSTICE GRIFFITHS

**DATE OF ORDER:** 19 December 2018

**WHERE MADE:** Canberra

**THE COURT ORDERS THAT:**

1. Pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth), on the ground that the order is necessary to prevent prejudice to the proper administration of justice, Annexure RMM-8 to the affidavit of Rory Michael Markham sworn on 12 December 2018 (**Markham Affidavit**) is confidential (**Confidential Material**).
2. Subject to further order:
  - (a) the Confidential Material, and any copy, including any copy provided to any Associate or Assistant to his Honour Justice Griffiths, of the Markham Affidavit annexing unredacted Confidential Material, is not required to be served on any of the respondents.
  - (b) any copy, including any copy provided to any Associate or Assistant to his Honour Justice Griffiths, of the Markham Affidavit annexing unredacted Confidential Material is to be placed on the Court file in a sealed envelope marked “Confidential – not to be opened without leave of the Court or a Judge”; and
  - (c) the Confidential Material shall not be accessed by, or disclosed to, any person other than a Justice of this Court or the applicant.
3. Pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth), the Applicant is granted approval to discontinue the proceeding against the Second Respondent with there being no order as to costs.
4. By 4pm on 21 December 2018, the Applicant file and serve a notice of discontinuance in respect of the Second Respondent.

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Filed on behalf of (name & role of party)	Applicant		
Prepared by (name of person/lawyer)	Rory Markham		
Law firm (if applicable)	Adero Law		
Tel	02 6189 1022	Fax	
Email	<a href="mailto:Rory.Markham@aderolaw.com.au">Rory.Markham@aderolaw.com.au</a>		
<b>Address for service</b> (include state and postcode)	5 Torrens Street Braddon ACT 2612		



5. Chandler Macleod Group Limited (ACN 090 555 052) be joined as a respondent to the proceeding.
6. The Applicant have leave to file and serve, by 4pm on 21 December 2018, an amended originating application in the form of the proposed amended originating application at Annexure A to these orders, save that the date to be inserted in paragraph 1 on page 8 is to be the date of filing.
7. The Applicant file and serve, by 4pm on 21 December 2018, an amended statement of claim in the form of the proposed Amended Statement of Claim at Annexure B to these orders, save that the date to be inserted in paragraph 1(c)(i) is to be the date of filing.
8. Any Respondent file and serve any application for security for costs, together with evidence in support, by 15 February 2019 (provided that Augusta Ventures Limited provides an address for service in Australia).
9. The Applicant and/or Augusta Ventures Limited file and serve any evidence in response to any application for security for costs by 8 March 2019.
10. The Respondents file and serve their defences and any cross claims by 15 March 2019.
11. The question of any costs thrown away by reason of the amendments to the Originating Application and Statement of Claim is reserved.
12. Liberty to apply on the giving of 48 hours notice.

Date that entry is stamped: 19 December 2018

*Warrick Soden*  
Registrar

**Schedule**

No: ACD47/2018

Federal Court of Australia

District Registry: Australian Capital Territory

Division: Fair Work

Second Respondent      HUNTER VALLEY ENERGY COAL PTY LTD (ACN 062 894  
464)

Third Respondent      MT ARTHUR COAL PTY LIMITED (ACN 000 181 902)

Annexure A

Form 19  
Rule 9.32



**Amended Originating application starting a representative proceeding under  
Part IVA of the Federal Court of Australia Act 1976**

No. ACD47 of 2018

Federal Court of Australia  
District Registry: Australian Capital Territory  
Division: Fair Work Division

**Simon Turner**  
Applicant

**Ready Workforce (A Division of Chandler Macleod) Pty Ltd (ACN 088 288 037)** and others named in  
the schedule

First Respondent

To the Respondents

The Applicant applies for the relief set out in this amended application.

The Court will hear this amended application, or make orders for the conduct of the proceeding, at the  
time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your  
absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking  
any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

Date:

Signed by an officer acting with the authority of  
the District Registrar

Filed on behalf of (name & role of party)	Simon Turner, Applicant	
Prepared by (name of person/lawyer)	<del>Terrence Lynch SC, Richard Attiwill QC, Guy Donnellan and Lucy Saunders</del> Eugenia Levine of Counsel, <del>Rory Markham, lawyer</del>	
Law firm (if applicable)	Adero Law	
Tel	(02) 6189 1022	Tel (02) 6189 1022
Email	<a href="mailto:Rory.markham@aderolaw.com.au">Rory.markham@aderolaw.com.au</a>	
Address for service (include state and postcode)	5 Torrens St, Braddon ACT 2612	



### **Details of claim**

On the grounds stated in the accompanying Amended Statement of Claim (and adopting the terms defined therein), the Applicant claims on his own behalf and on behalf of each of the Group Members, as relevant:

#### Declarations

1. A declaration that the Applicant and each of the Group Members who were employed by Ready Workforce to work at the Mine during the Relevant Period were “other than casual” employees within the meaning of s 86 of the FWA.
2. A declaration that the Applicant and each of the Group Members who were employed by Ready Workforce to work at the Mine during the Relevant Period were not “casual” employees within the meaning of s 123(1)(c) of the FWA.
3. A declaration that the Applicant was entitled to the NES Annual Leave Entitlement and the NES Termination Notice Entitlement in relation to the termination of his employment with Ready Workforce.
4. A declaration that throughout the Applicant’s Award Period, the Applicant was employed by Ready Workforce as a full-time employee within the meaning of cl 10.2 of the Award.
5. A declaration that throughout the Group Award Period, each of the Group Members referred to in paragraph 17(a) of the Amended Statement of Claim were employed by Ready Workforce to work at the Mine as full-time employees within the meaning of cl 10.2 of the Award (for so long as they worked pursuant to the Full Time Group Members’ Rosters).
6. A declaration that, throughout the Group Award Period, each of the Group Members referred to in paragraph 17(b) of the Amended Statement of Claim was employed by Ready Workforce to work at the Mine as part-time employees within the meaning of \_\_\_\_\_ cl 10.3 of the Award (for so long as they worked pursuant to the Part Time Group Members’ Rosters).
7. A declaration that the Applicant was entitled to be paid the Award entitlements referred to in Part E of the Amended Statement of Claim by Ready Workforce.
8. A declaration that throughout the Applicant’s Agreement Period, the Applicant was employed by Ready Workforce as a full time employee within the meaning of cl 10.6 of the Chandler Macleod Agreement.
9. A declaration that throughout the Group Agreement Period, each of the Group Members referred to in paragraph 25(a) of the Amended Statement of Claim, were employed by Ready Workforce to



work at the Mine as full time employees within the meaning of cl 10.6 of the Chandler Macleod Agreement (for so long as they worked pursuant to the Full Time Group Members' Rosters).

10. A declaration that, throughout the Group Agreement Period, each of the Group Members referred to in paragraph 25(b) of the Amended Statement of Claim were employed by Ready Workforce to work at the Mine as part time employees within the meaning of cl 10.7 of the Chandler Macleod Agreement (for so long as they worked pursuant to the Part Time Group Members' Rosters).
11. A declaration that the Applicant was entitled to be paid the Chandler Macleod Agreement entitlements referred to in Part F of the Amended Statement of Claim by Ready Workforce.
12. A declaration that the Applicant and the Group Members were entitled to be paid for the unpaid hours alleged in paragraph 120 of the Amended Statement of Claim.

Orders compensating the Applicant and Group Members:

13. In respect of each of Ready Workforce's contraventions of s 45 and/or s 50, alternatively to s 45 and/or s 50, s 44, of the FWA:
  - (a) orders pursuant to s 545(1) of the FWA that Ready Workforce provide to the Applicant and Group Members their entitlements under the Award and/or the Chandler Macleod Agreement, alternatively under the NES;
  - (b) further or in the alternative, orders pursuant to s 545(2)(b) of the FWA that Ready Workforce pay to the Applicant and Group Members compensation for the loss they have suffered because of its contraventions;
  - (c) further or in the alternative, orders pursuant to s 546(1) and s 546(3) of the FWA that:
    - (i) Ready Workforce pay pecuniary penalties to the Applicant for each of its contraventions relating to him;
    - (ii) Ready Workforce pay pecuniary penalties to each of the Group Members for each of its contraventions relating to each of them, to the extent that such contraventions do not, for the purposes of s 557(1) of the FWA, form part of the same course of conduct by Ready Workforce as that in respect of which pecuniary penalties are payable to the Applicant;
  - (d) pursuant to s 547 of the FWA, interest up to judgment on the above amounts.
14. In respect of each of Mt Arthur Coal's contraventions of s 45 and/or s 50, alternatively to s 45



and/or s 50, s 44, of the FWA:

- (a) orders pursuant to s 545(1) of the FWA that Mt Arthur Coal pay to the Applicant and Group Members their entitlements under the Award and/or the Chandler Macleod Agreement, alternatively under the NES;
  - (b) further or in the alternative, orders pursuant to s 545(2)(b) of the FWA that Mt Arthur Coal pay to the Applicant and Group Members compensation for the loss they have suffered because of Mt Arthur Coal's contraventions;
  - (c) further or in the alternative, orders pursuant to s 546(1) and s 546(3) of the FWA that:
    - (i) Mt Arthur Coal pay pecuniary penalties to the Applicant for each of its contraventions relating to him;
    - (ii) Mt Arthur Coal pay pecuniary penalties to each of the Group Members for each of its contraventions relating to each of them, to the extent that such contraventions do not, for the purposes of s 557(1) of the FWA, form part of the same course of conduct by Mt Arthur Coal as that in respect of which pecuniary penalties are payable to the Applicant; and
  - (d) pursuant to s 547 of the FWA, interest up to judgment on the above amounts.
15. In respect of each of Chandler Macleod Group's contraventions of s 45 and/or s 50, alternatively to s 45 and/or s 50, s 44, of the FWA:
- (a) orders pursuant to s 545(1) of the FWA that Chandler Macleod Group pay to the Applicant and Group Members their entitlements under the Award and/or the Chandler Macleod Agreement, alternatively under the NES;
  - (b) further or in the alternative, orders pursuant to s 545(2)(b) of the FWA that Chandler Macleod Group pay to the Applicant and Group Members compensation for the loss they have suffered because of Chandler Macleod's contraventions;
  - (c) further or in the alternative, orders pursuant to s 546(1) and s 546(3) of the FWA that:
    - (i) Chandler Macleod Group pay pecuniary penalties to the Applicant for each of its contraventions relating to him;
    - I. Chandler Macleod Group pay pecuniary penalties to each of the Group Members for each of its contraventions relating to each of them, to the extent that such contraventions do not, for the purposes of s 557(1) of the FWA, form part of the



same course of conduct by Chandler Macleod Group as that in respect of which pecuniary penalties are payable to the Applicant;

(d) pursuant to s 547 of the FWA, interest up to judgment on the above amounts.

16. In respect of each of Chandler Macleod Group's contraventions of s 345 of the FWA, orders pursuant to s 546(1) and s 546(3) of the FWA that:

(a) Chandler Macleod Group pay pecuniary penalties to the Applicant for each of its contraventions relating to him;

(b) Chandler Macleod Group pay pecuniary penalties to each of the Group Members to whom the Award Representation and/or the Agreement Representation was made for each of its contraventions relating to each of them.

~~1. In respect of each of the:~~

~~(i) Award Entitlements Contraventions;~~

~~(ii) Agreement Entitlements Contraventions;~~

~~(iii) HVEC Entitlements Contraventions; and~~

~~(iv) Mt Arthur Coal Entitlements Contraventions,~~

~~as defined in paragraphs [31], [33] and [51] of the Statement of Claim filed herein:~~

~~(v) pursuant to s. 545(1) of the FWA, an order that the Respondents are liable to pay compensation to the Applicant or the Group Members, as the case may be, in respect of the loss suffered because the Award Entitlements and/or Agreement Entitlements were not paid or provided;~~

~~(vi) pursuant to s. 547 of the FWA, interest up to judgment on the above amounts; and~~

~~(vii) pursuant to s.546 of the FWA, an order that pecuniary penalties be imposed on each of the Respondents, made payable to the Applicant and each of the Group Members.~~

~~2. In respect of each of the:~~

~~(i) Award Period Casual Employment Misrepresentation Contraventions;~~

~~(ii) Agreement Period Casual Employment Misrepresentation Contraventions;~~





~~(iii) — HVEC Misrepresentation Contraventions; and~~

~~(iv) — Mt Arthur Coal Misrepresentation Contraventions,~~

~~as defined in paragraphs [42], [46] and [53] of the Statement of Claim filed herein, pursuant to s. 546 of the FWA, an order that pecuniary penalties be imposed on each of the Respondents, made payable to the Applicant and each of the Group Members.~~

~~3. — In respect of the Accident Pay Entitlement Contraventions, as defined at [35] of the Statement of Claim filed herein:~~

~~(i) — pursuant to s. 545(1) of the FWA, an order that the Respondents are liable to pay compensation to the Applicant or the Group Members, as the case may be, in respect of the loss suffered because the Accident Pay Entitlements were not paid or provided;~~

~~(ii) — pursuant to s. 547 of the FWA, interest up to judgment on the above amounts; and~~

~~(iii) — pursuant to s.546 of the FWA, an order that pecuniary penalties be imposed on each of the Respondents, made payable to the Applicant and each of the Group Members.~~

### **Questions common to claims of Group Members**

The questions of law or fact common to the claims of the Applicant and the Group Members are:



1. Whether the Applicant and each of the Group Members employed by Ready Workforce to work at the Mine during the Relevant Period were “other than casual” employees within the meaning of s 86 of the FWA.
  2. Whether the Applicant and each of the Group Members employed by Ready Workforce to work at the Mine during the Relevant Period were “casual” employees within the meaning of s 123(1)(c) of the FWA.
  3. Whether Mt Arthur Coal knew during the Relevant Period that the Applicant and the Group Members were employed by Ready Workforce and worked at the Mine on the bases alleged in paragraphs 12, 15, 18, 23, 78(a) to 78(c) and 87(a) to 87(c) of the Amended Statement of Claim.
  4. Whether Mt Arthur Coal knew during the Relevant Period the days of the week, the times, and the hours worked by the Applicant and the Group Members at the Mine.
  5. Whether Mt Arthur Coal knew during the Relevant Period that the Applicant and the Group Members were paid on the basis of the hours they worked and were not provided any other entitlements.
  6. Whether Mr Arthur Coal utilised the labour services of the Applicant and the Group Members to enable it to operate the Mine during the Relevant Period.
  7. Whether Chandler Macleod Group knew during the Relevant Period that the Applicant and the Group Members were employed by Ready Workforce and worked at the Mine on the bases alleged in paragraphs 12, 15, 18, 23, 78(a) to 78(c) and 87(a) to 87(c) of the Amended Statement of Claim.
  8. Whether Chandler Macleod Group knew during the Relevant Period the days of the week, the times and the hours worked by the Applicant and Group Members at the Mine.
  9. Whether Chandler Macleod Group knew that the Applicant and the Group Members were paid on the basis of the hours they worked and were not provided any other entitlements.
  10. Whether Chandler Macleod Group was engaged by HVEC to provide the labour services of the Applicant and the Group Members to work at the Mine during the Relevant Period.
1. ~~Whether the Applicant and Group Members were engaged as permanent full time employees within the meaning of cl.8.2 of the Chandler Macleod Agreement?~~
  2. ~~Whether:~~



- (a) ~~the Applicant and Group Members are entitled to each of the Agreement Entitlements referred to in Schedule A to the Statement of Claim filed herein; and thus~~
- (b) ~~the First Respondent contravened s.50 of the FWA by its failure to provide the Applicant and Group Members with each of the Agreement Entitlements?~~
3. ~~Whether the Agreement Period Casual Employment Misrepresentations, as defined in the Statement of Claim filed herein, were:~~
- (a) ~~misrepresentations about the workplace rights of the Applicant and Group Members; and~~
- (b) ~~made recklessly,~~
- ~~such that by the making of them the First Respondent contravened s.345 of the FWA?~~
4. ~~Whether the Second and Third Respondents were involved in the contraventions of the First Respondent described at 2 and 3 above within the meaning of s.550, or alternatively s.362, of the FWA?~~

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are all persons ~~who~~:

1. who were or have been employed by the First Respondent Ready Workforce to work at the Mine at any time within six years before the date of filing of the amended originating application in this proceeding (**Relevant Period**); as at or after 11 June 2015 (including persons first engaged by the First Respondent prior to that date):
  - (a) ~~as ‘Production Mineworkers’ or ‘Trade Mineworkers’ within the meaning of cl.20 of the Chandler Macleod Agreement; and~~
  - (b) ~~in accordance with the system defined at paragraph 22 of the Statement of Claim filed herein as the Mine Rosters; and~~  
~~during the course of such employment, the First Respondent has described, and treated for the purposes of the Chandler Macleod Agreement, as ‘casual’ employees~~
2. who were:
  - (a) at any time from the start of the Relevant Period to about 10 June 2015, each a coal mining employee within the meaning of cl 4.1(b)(ii) of the Award and, as a result, each covered by the Award; and/or
  - (b) who were, at any time between about 11 June 2015 and the end of the Relevant Period, each a party to and bound by the Chandler Macleod Agreement and, as a result, each a person to whom the Chandler Macleod Agreement applied;



3. who worked at the Mine in accordance with the roster system alleged in paragraphs 16 and/or 24 of the Amended Statement of Claim; and
4. who were treated as “casual” employees by Ready Workforce.

**Applicant’s address**

The Applicant’s address for service is:

Place: 5 Torrens St, Braddon ACT 2612

Email: rory.markham@aderolaw.com.au

The Applicant’s address is 5 Torrens St, Braddon ACT 2612

**Service on the Respondent**

It is intended to serve this amended application on all Respondents.

Date: December 26 June 2018

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Signed by Rory Markham  
Lawyer for the Applicant

**Schedule**No. ACD47 of 2018

Federal Court of Australia

District Registry: Australian Capital Territory

Division: Fair Work Division

**Respondents**Second Respondent: ~~\_\_\_\_\_~~ **Hunter Valley Energy Coal Pty Ltd (ACN 062 894 464)**~~Third~~ Second Respondent: **Mt Arthur Coal Pty Limited Ltd (ACN 000 181 902)**Third Respondent: **Chandler Macleod Group Limited (ACN 090 555 052)**Date: December 26 ~~June~~ 2018



## Annexure B

Form 17  
Rule 8.05(1)(a)

### Amended Statement of claim

No. ACD47 of 2018

Federal Court of Australia  
District Registry: Australian Capital Territory  
Division: Fair Work Division

**Simon Turner**

Applicant

**Ready Workforce (A Division of Chandler Macleod) Pty Ltd (ACN 088 288 037)**

First Respondent

~~**Hunter Valley Energy Coal Pty Ltd (ACN 062 894 464)**~~

~~Second Respondent~~

**Mt Arthur Coal Pty Limited Ltd (ACN 000 181 902)**

~~Third~~ Second Respondent

**Chandler Macleod Group Limited (ACN 090 555 052)**

Third Respondent

### A. PARTIES AND BACKGROUND

1. The Applicant:

- (a) was, at all material times, a national system employee within the meaning of s 12 and s 13 of the *Fair Work Act 2009* (Cth) (**FWA**);
- (b) was, from about 28 September 2014 to about 10 June 2015 (**Applicant's Award Period**), a coal mining employee within the meaning of cl 4.1(b)(ii) of the *Black Coal Mining Industry Award 2010 (Award)* and, as a result, covered by the Award;
- (bb) was, from about 11 June 2015 to about 17 June 2016 (**Applicant's Agreement Period**), a party to and bound by the *Chandler Macleod Northern District of NSW*



Black Coal Mining Agreement 2015 (Chandler Macleod Agreement) and, as a result, a person to whom the Chandler Macleod Agreement applied;

(c) commences this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) on his own behalf and on behalf of all persons (**Group Members**) who:

(i) ~~who were or have been employed by Chandler Macleod to work at the Mount Arthur eCoal mMine (the Mine) by the First Respondent (Ready Workforce) as at or after 11 June 2015 (including persons first engaged by Chandler Macleod prior to that date at any time within six years before the date of filing of the amended originating application in this proceeding (Relevant Period);~~

~~A. (as ‘Production Mineworkers’ or ‘Trade Mineworkers’ within the meaning of cl.20 of Chandler Macleod Northern District of NSW Black Coal Mining Agreement 2015 (Chandler Macleod Agreement); and~~

~~B. in accordance with the system defined at paragraph 22 as the Mine Rosters; and~~

(ii) who were:

(c) at any time from the start of the Relevant Period to about 10 June 2015 (Group Award Period), each a coal mining employee within the meaning of cl 4.1(b)(ii) of the Award and, as a result, each covered by the Award; and/or

(d) who were, at any time between about 11 June 2015 and the end of the Relevant Period (Group Agreement Period), each a party to and bound by the Chandler Macleod Agreement and, as a result, each a person to whom the Chandler Macleod Agreement applied;

(iii) who worked at the Mine in accordance with the roster system alleged in paragraphs 16 and/or 24 below; and

(iv) who were treated as “casual” employees by Ready Workforce,

(Group Members).

2. At all material times, the Mine was an open cut black coal mine located in the Hunter Valley in New South Wales.

3. ~~Chandler Macleod~~Ready Workforce is, and was at all material times:

(a) is, and was at all material times a corporation incorporated under the *Corporations Act 2001* (Cth), liable to be sued in its corporate name and style;



- (b) is, and was at all material times a national system employer within the meaning of s 12 and s 14 of the FWA;
  - (c) was at all material times during the Applicant's Award Period and the Group Award Period an employer of coal mining employees within the meaning of cl 4.1(a) of the Award and, as a result, covered by the Award;
  - (d) was at all material times during the Applicant's Agreement Period and the Group Agreement Period a party to, and bound by, the Chandler Macleod Agreement and, as a result, a person to whom the Chandler Macleod Agreement applied; and
  - (e) is, and was at all material times a wholly owned subsidiary of the Third Respondent (**Chandler Macleod Group**).
4. ~~The Second Respondent~~ Hunter Valley Energy Coal Pty Ltd (HVEC) is, and was at all material times:
- (a) is, and was at all material times a corporation incorporated under the *Corporations Act 2001* (Cth), liable to be sued in its corporate name and style;
  - (b) ~~the owner~~ of the Mine;
  - (c) was at all material times part of the BHP Billiton corporate group; and
  - (d) is and was at all material times the controlling entity of the ~~Third~~Second Respondent (**Mt Arthur Coal**);
  - (e) at all material times operated the Mine together with Mt Arthur Coal; and
  - (f) at all material times engaged Chandler Macleod Group to provide labour-hire services to the Mine.
5. At all material times, Mt Arthur Coal:
- (a) is and was a corporation incorporated under the *Corporations Act 2001* (Cth), liable to be sued in its corporate name and style;
  - (b) is and was a wholly owned subsidiary of HVEC;
  - (c) operated the Mine together with HVEC; and
  - (d) as part of such operation, ~~used labour provided by~~ employed persons to work at the Mine.
- 5A. At all material times, Chandler Macleod Group:





- (a) was a corporation incorporated under the *Corporations Act 2001* (Cth), liable to be sued in its corporate name and style;
- (b) was the ultimate holding company of, and wholly owned, Ready Workforce; and

### **Particulars**

Chandler Macleod Group has at all material times held 100% of the shares in Chandler Macleod Services Pty Ltd, which, in turn, has at all material times held 100% of the shares in Ready Workforce.

- (c) was engaged by HVEC to provide labour-hire services as alleged in paragraph 4(f) above.
6. Immediately prior to the commencement of this proceeding seven or more persons have claims against each of the respondents within the meaning of ~~section~~ s 33C of the FCA Act.

### **B. THE AWARD**

7. At all material times, cl 10.1 of the Award provided: “An employer may employ an employee included in any classification in this award in any of the following types of employment:

- (a) full-time
- (b) part-time; or
- (c) in the case of classifications in Schedule B – Staff Employees, casual.”

8. At all material times, cl 10.2 of the Award provided: “A full-time employee is an employee whose average ordinary hours of work will be 35 hours per week.”

9. At all material times, cl 10.3 of the Award provided: “(a) A part-time employee is an employee who:

- (i) works less than 35 hours per week;
- (ii) has reasonably predictable hours of work; and
- (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.”

### **C. THE CHANDLER MACLEOD AGREEMENT**

10. At all material times, cl 10.6 of the Chandler Macleod Agreement provided: “A ‘Full time employee’ is a person who is employed as described in a letter of offer of employment. The average ordinary hours of work per week will be 35. An employee engaged as a full time employee is entitled to accrue leave outlined in this Agreement.”



11. At all material times, cl 10.7 of the Chandler Macleod Agreement provided: “A ‘Part time employee’ is a person who works less than 35 hours per week and has reasonably predictable hours of work. A part-time employee will be paid per hour 1/35<sup>th</sup> of the weekly wage for the classification which [sic] the employee is engaged.”

## **D. EMPLOYMENT OF APPLICANT AND GROUP MEMBERS BY READY WORKFORCE**

### **D.1 Applicant’s Award Period**

12. The Applicant was employed by Ready Workforce to work at the Mine during the Applicant’s Award Period.

13. The Applicant worked at the Mine during the Applicant’s Award Period in accordance with a roster / rosters which:

- (a) was a long-term pre-determined roster for “A Crew”;
- (b) was a seven-day a week, 24-hour a day roster;
- (c) had shifts that required the Applicant to work an average of 35 ordinary hours or more per week; and
- (d) specified the days, times and hours which the Applicant was required to work during the day or at night in any seven day period.

#### **(Applicant’s Roster).**

#### **Particulars**

Particulars of the Applicant’s roster / rosters will be provided upon the completion of discovery.

14. By reason of the matters alleged in paragraphs 12 and 13 above, during the Applicant’s Award Period, the Applicant was employed by Ready Workforce at the Mine as a full time employee within the meaning of cl 10.2 of the Award.

### **D.2 Group Award Period**

15. Group Members were employed by Ready Workforce to work at the Mine during the Group Award Period (**Award Group Members**).

16. Each of the Award Group Members worked at the Mine in accordance with one of the following rosters:

- (a) a roster which:



- (i) was a long-term pre-determined roster for “A Crew”, “B Crew”, “C Crew” and/or “D Crew”;
- (ii) was a seven-day a week, 24-hour a day roster;
- (iii) had shifts that required them to work an average of 35 ordinary hours or more per week; and
- (iv) specified the days, times and hours which they were required to work during the day or at night in any seven day period,

**(Full Time Group Members’ Rosters);**

**Particulars**

Particulars of the Group Members’ roster / rosters will be provided upon the completion of discovery.

- (b) a roster which:
  - (i) was a long-term pre-determined roster for “A Crew”, “B Crew”, “C Crew” and/or “D Crew”;
  - (ii) was a seven-day a week, 24-hour a day roster;
  - (iii) had shifts that required them to work an average of less than 35 hours per week; and
  - (iv) specified the days, times and hours which they were required to work during the day or at night in any seven day period,

**(Part Time Group Members’ Rosters).**

**Particulars**

Particulars of the Group Members’ roster / rosters will be provided upon the completion of discovery.

**17. During the Group Award Period, by reason of the matters:**

- (a) alleged in paragraphs 15 and 16(a) above, Award Group Members who worked in accordance with the Full Time Group Members’ Rosters were employed to work at the Mine as full-time employees within the meaning of cl 10.2 of the Award (for so long as they remained on the Full Time Group Members’ Rosters); and
- (b) alleged in paragraphs 15 and 16(b) above, Award Group Members who worked in accordance with the Part Time Group Members’ Rosters were employed to work at the



Mine as part-time employees within the meaning of cl 10.3 of the Award (for so long as they remained on the Part Time Group Members' Rosters).

### **D.3 Applicant's Agreement Period**

18. The Applicant was employed by Ready Workforce to work at the Mine during the Applicant's Agreement Period.
19. The Applicant worked at the Mine during the Applicant's Agreement Period in accordance with the Applicant's Roster.
20. By reason of the matters alleged in paragraphs 18 and 19 above, the Applicant was employed by Ready Workforce during the Applicant's Agreement Period to work at the Mine as a full time employee within the meaning of cl 10.6 of the Chandler Macleod Agreement
21. The Applicant:
  - (a) on or about 12 December 2015 (**Injury Date**), sustained an injury in the course of performing his work at the Mine (**Injury**); and
  - (b) on or about 13 December 2015, began receiving weekly payments under applicable workers compensation legislation within the meaning of cl 38 of the Chandler Macleod Agreement.
22. On or about 17 June 2016 (**Termination Date**), Ready Workforce terminated the Applicant's employment (**Termination**).

### **Particulars**

The Applicant refers to and relies on the letter from Chandler Macleod Group, on behalf of Ready Workforce, to the Applicant dated 17 June 2016, which, on a proper construction, constituted termination of the Applicant's employment at the initiative of Ready Workforce rather than acceptance by Ready Workforce of any purported repudiation by the Applicant.

### **D.4 Group Agreement Period**

23. Group Members were employed by Ready Workforce to work at the Mine during the Group Agreement Period (**Agreement Group Members**).
24. Each of the Agreement Group Members worked at the Mine in accordance with:
  - (a) the Full Time Group Members' Roster; and/or
  - (b) the Part Time Group Members' Rosters.



25. During the Group Agreement Period, by reason of the matters:

(a) alleged in paragraphs 23 and 24(a) above, Agreement Group Members who worked in accordance with the Full Time Group Members' Rosters were employed to work at the Mine as full time employees within the meaning of cl 10.6 of the Chandler Macleod Agreement (for so long as they remained on the Full Time Group Members' Rosters); and

(b) alleged in paragraphs 23 and 24(b) above, Agreement Group Members who worked in accordance with the Part Time Group Members' Rosters were employed to work at the Mine as part time employees within the meaning of cl 10.7 of the Chandler Macleod Agreement (for so long as they remained on the Part Time Group Members' Rosters).

**E. CONTRAVENING CONDUCT UNDER THE AWARD IN RELATION TO APPLICANT: READY WORKFORCE**

**E.1 Ordinary Hours and Ordinary Rate**

26. At all material times, cl 21.1 of the Award provided: "The ordinary hours of work will be an average of 35 hours per week. Those hours will be averaged over the roster cycle." (Award Ordinary Hours).

**Particulars**

The Applicant refers to and relies on the definition of "ordinary hours" in cl 3.1 of the Award.

27. During the Applicant's Award Period, the Applicant was paid a single hourly rate by Ready Workforce for the work he performed at the Mine pursuant to the Applicant's Roster (Award Ordinary Rate).

**E.2 Shift Loading Rate**

28. At all material times, cl 22.2 of the Award provided that "115% of the ordinary time rate" would be payable for ordinary hours performed during an afternoon shift or a rotating night shift (Award Shift Loading Rate).

**Particulars**

The Applicant refers to and relies on:



- (i) cl 22.1(a) of the Award, which provided that an afternoon shift was any shift the ordinary hours of which finished after 6.00pm and at or before midnight (**Award Afternoon Shift**); and
- (ii) cl 22.1(b) of the Award, which provided that a night shift was any shift, the ordinary hours of which finished after midnight and at or before 8.00 am (**Award Night Shift**).

The “ordinary time rate” in cl 22.2 of the Award is to be construed as referring to the Award Ordinary Rate.

The Award Shift Loading Rate is therefore to be calculated as 115% of the Award Ordinary Rate.

29. During the Applicant’s Award Period, the Applicant worked Award Ordinary Hours at the Mine during:

- (a) Award Afternoon Shifts; and
- (b) Award Night Shifts.

#### **Particulars**

Particulars of the hours worked will be provided upon completion of discovery.

30. By reason of the matters alleged in paragraphs 14, 28 and 29 above, Ready Workforce was required to pay the Applicant the Award Shift Loading Rate for the hours referred to in paragraphs 29(a) and 29(b) above.

31. In contravention of cl 22.2 of the Award, Ready Workforce did not pay the Applicant the Award Shift Loading Rate for the hours referred to in paragraphs 29(a) and 29(b) above, and only paid him the Award Ordinary Rate for those hours.

#### **Particulars**

Particulars of the calculation of the Award Shift Loading Rates not paid will be provided upon the completion of discovery.

### **E.3 Saturday Rates**

32. At all material times, cl 21.2 of the Award provided that all ordinary hours worked by an employee on a Saturday would be paid at time and a half for the first four hours and double time after the first four hours (**Award Saturday Rates**).

#### **Particulars**



The references to “time and a half” and “double time” in cl 21.2 of the Award are to be construed as one and a half and double the rate, respectively, otherwise payable to the Applicant for work during Award Ordinary Hours, which is the Award Shift Loading Rate.

The Applicant only worked an Award Afternoon Shift or an Award Night Shift on a Saturday.

The Award Saturday Rates are calculated as:

- (i) a rate of 150% of the Award Shift Loading Rate for the first four hours worked as Award Ordinary Hours on a Saturday; and
- (ii) a rate of 200% of the Award Shift Loading Rate for the hours worked as Award Ordinary Hours on a Saturday after the first four hours.

33. During the Applicant’s Award Period, the Applicant worked Award Ordinary Hours at the Mine on Saturdays.

#### **Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

34. By reason of the matters alleged in paragraphs 14, 32 and 33 above, Ready Workforce was required to pay the Applicant the Award Saturday Rates for the hours referred to in paragraph 33 above.

35. In contravention of cl 21.2 of the Award, Ready Workforce did not pay the Applicant the Award Saturday Rates for the hours referred to in paragraph 33 above, and only paid him the Award Ordinary Rate for those hours.

#### **Particulars**

Particulars of the calculation of the Award Saturday Rates not paid will be provided upon the completion of discovery.

#### **E.4 Sunday Rate**

36. At all material times, cl 21.2 of the Award provided that all ordinary hours worked by an employee on a Sunday would be paid at double time (Award Sunday Rates).

#### **Particulars**



The reference to “double time” in cl 21.2 of the Award is to be construed as double the rate otherwise payable to the Applicant for work during Award Ordinary Hours, which is the Award Shift Loading Rate.

The Applicant only worked an Award Afternoon Shift or an Award Night Shift on a Sunday.

The Award Sunday Rates are calculated as a rate of 200% of the Award Shift Loading Rate for all Award Ordinary Hours worked on a Sunday.

37. During the Applicant’s Award Period, the Applicant worked at the Mine during Award Ordinary Hours on Sundays.

#### **Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

38. By reason of the matters alleged in paragraphs 14, 36 and 37 above, Ready Workforce was required to pay the Applicant the Award Sunday Rates for the hours referred to in paragraph 37 above.

39. In contravention of cl 22.1 of the Award, Ready Workforce did not pay the Applicant the Award Sunday Rates for the hours referred to in paragraph 37 above, and only paid him the Award Ordinary Rate for those hours.

#### **Particulars**

Particulars of the calculation of the Award Sunday Rates not paid will be provided upon the completion of discovery.

### **E.5 Overtime Rate**

40. At all material times, cl 22.2 of the Award provided that a rate of “*overtime penalty rate plus 15% of the ordinary time rate for time worked*” would be paid for “*overtime hours 6 or 7 day roster*” (**Award Overtime Rate**).

#### **Particulars**

The reference in cl 22.2 of the Award to “overtime penalty rate” is to be construed, by reference to cl 17.2(b) of the Award, as double the Award Ordinary Rate.

The Award Overtime Rate is calculated as a rate of 200% of the Award Ordinary Rate plus 15% for all hours worked in excess of or outside the Award Ordinary Hours.





41. During the Applicant's Award Period, the Applicant worked at the Mine in excess of, or outside, the Award Ordinary Hours.

**Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

42. By reason of the matters alleged in paragraphs 14, 40 and 41 above, Ready Workforce was required to pay the Applicant the Award Overtime Rate for the hours referred to in paragraph 41 above.

43. In contravention of cl 22.2 of the Award, Ready Workforce did not pay the Applicant the Award Overtime Rate for the hours referred to in paragraph 41 above, and only paid him the Award Ordinary Rate for those hours.

**Particulars**

Particulars of the calculation of the Award Overtime Rates not paid will be provided upon the completion of discovery.

**E.6 Holiday Rates**

44. At all material times:

- (a) cl 27.4(a) of the Award provided: "An employee who is required to work on a holiday is to be paid at the rate of double time for work performed during ordinary hours, in addition to the payment prescribed"; and
- (b) cl 27.4(b) of the Award provided: "Work performed in excess of ordinary hours on a holiday is to be paid at the rate of treble time."

**(Award Holiday Rates).**

**Particulars**

The reference in cl 27.4(a) to "double time" is to be construed as double the rate otherwise payable to the Applicant for work during Award Ordinary Hours, which is the Award Shift Loading Rate.

The reference in cl 27.4(b) to "treble time" is to be construed as triple the rate otherwise payable to the Applicant for work during Award Ordinary Hours, which is the Award Shift Loading Rate.

The Applicant only worked an Award Afternoon Shift or an Award Night Shift during Award Ordinary Hours.



The Award Holiday Rates are calculated as a rate of 200% of the Award Shift Loading Rate for all Award Ordinary Hours worked on a holiday, and a rate of 300% of the Award Shift Loading Rate for all work performed in excess of Award Ordinary Hours on a holiday.

45. During the Applicant's Award Period, the Applicant worked at the Mine:

- (a) during Award Ordinary Hours on a holiday; and
- (b) in excess of Award Ordinary Hours on a holiday.

#### **Particulars**

Particulars of the hours worked on a holiday will be provided upon the completion of discovery.

46. By reason of the matters alleged in paragraphs 14, 44 and 45 above, Ready Workforce was required to pay the Applicant the Award Holiday Rates for the hours referred to in paragraphs 45(a) and 45(b) above.

47. In contravention of cl 27.4(a) and cl 27.4(b) of the Award, Ready Workforce did not pay the Applicant the Award Holiday Rates for the hours referred to in paragraphs 45(a) and 45(b) above, and only paid him the Award Ordinary Rate for those hours.

#### **Particulars**

Particulars of the calculation of the Award Holiday Rates not paid will be provided upon the completion of discovery.

### **F. CONTRAVENING CONDUCT UNDER THE CHANDLER MACLEOD AGREEMENT IN RELATION TO APPLICANT: READY WORKFORCE**

#### **F.1 Ordinary Hours and Ordinary Rate**

48. At all material times, cl 26.1 of the Chandler Macleod Agreement provided: "*The ordinary hours of work will be an average of 35 hours per week. Those hours will be averaged over the roster cycle*" (**Agreement Ordinary Hours**).

49. During the Applicant's Agreement Period, the Applicant was paid a single hourly rate by Ready Workforce for the work he performed at the Mine pursuant to the Applicant's Roster (**Agreement Ordinary Rate**).

#### **F.2 Shift Loading Rates**



50. At all material times, cl 27.2 of the Chandler Macleod Agreement provided that “ordinary time rate plus 15% loading” will be paid for “Afternoon Shift” and “ordinary time rate plus 25% loading” would be paid for “Rotating or permanent night shifts” (**Agreement Shift Loading Rates**).

#### **Particulars**

The Applicant refers to and relies on:

- (i) cl 27.1(a) of the Chandler Macleod Agreement, which provides that an afternoon shift means any shift the ordinary hours of which finish after 6.00pm and at or before midnight (**Agreement Afternoon Shift**); and
- (ii) cl 27.1(b) of the Chandler Macleod Agreement, which provides that a night shift means was any shift, the ordinary hours of which finish after midnight and at or before 8.00 am (**Agreement Night Shift**).

The “ordinary time rate” in cl 27.2 of the Chandler Macleod Agreement is to be construed as referring to the Agreement Ordinary Rate.

The Agreement Shift Loading Rate is therefore to be calculated as 115% of the Agreement Ordinary Rate for Agreement Afternoon Shift and 125% of the Agreement Ordinary Rate for Agreement Night Shift.

51. During the Applicant’s Agreement Period, the Applicant worked Agreement Ordinary Hours at the Mine during:

- (a) Agreement Afternoon Shifts; and
- (b) Agreement Night Shifts.

#### **Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

52. By reason of the matters alleged in paragraphs 20, 50 and 51 above, Ready Workforce was required to pay the Applicant the Agreement Shift Loading Rate for the hours referred to in paragraphs 51(a) and 51(b) above.

53. In contravention of cl 27.2 of the Chandler Macleod Agreement, Ready Workforce did not pay the Applicant the Agreement Shift Loading Rates for the hours referred to in paragraphs 51(a) and 51(b) above, and only paid him the Agreement Ordinary Rate for those hours.

#### **Particulars**



Particulars of the calculation of the Agreement Shift Loading Rates not paid will be provided upon the completion of discovery.

### **F.3 Saturday Rates**

54. At all material times, cl 26.2 of the Chandler Macleod Agreement provided that all ordinary hours worked by an employee on a Saturday will be paid at double time (**Agreement Saturday Rates**).

#### **Particulars**

The reference to “Double time” in cl 26.2 of the Chandler Macleod Agreement is to be construed as double the rates otherwise payable to the Applicant for work during Agreement Ordinary Hours, which are the Agreement Shift Loading Rates.

The Applicant only worked an Agreement Afternoon Shift or an Agreement Night Shift on a Saturday.

The Agreement Saturday Rates are calculated as a rate of 200% of the applicable Agreement Shift Loading Rate.

55. During the Applicant’s Agreement Period, the Applicant worked Agreement Ordinary Hours at the Mine on Saturdays.

#### **Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

56. By reason of the matters alleged in paragraphs 20, 54 and 55 above, Ready Workforce was required to pay the Applicant the Agreement Saturday Rates for the hours referred to in paragraph 55 above.

57. In contravention of cl 26.2 of the Chandler Macleod Agreement, Ready Workforce did not pay the Applicant the Agreement Saturday Rates for the hours referred to in paragraph 55 above, and only paid him the Agreement Ordinary Rate for those hours.

#### **Particulars**

Particulars of the calculation of the Agreement Saturday Rates not paid will be provided upon the completion of discovery.

### **F.4 Sunday Rates**



58. At all material times, cl 26.2 of the Chandler Macleod Agreement provided that all ordinary hours worked by an employee on a Sunday will be paid at double time (**Agreement Sunday Rates**).

**Particulars**

The reference to “Double time” in cl 26.2 of the Chandler Macleod Agreement is to be construed as double the rate otherwise payable to the Applicant for work during Agreement Ordinary Hours, which is the applicable Agreement Shift Loading Rate.

The Applicant only worked an Agreement Afternoon Shift or an Agreement Night Shift on a Sunday.

The Agreement Sunday Rates are calculated as a rate of 200% of the applicable Agreement Shift Loading Rate.

59. During the Applicant’s Agreement Period, the Applicant worked Agreement Ordinary Hours at the Mine on Sundays.

**Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

60. By reason of the matters alleged in paragraphs 20, 58 and 59 above, Ready Workforce was required to pay the Applicant the Agreement Sunday Rates for the hours referred to in paragraph 59 above.

61. In contravention of cl 26.2 of the Chandler Macleod Agreement, Ready Workforce did not pay the Applicant the Agreement Sunday Rates for the hours referred to in paragraph 59 above, and only paid him the Agreement Ordinary Rate for those hours.

**Particulars**

Particulars of the calculation of the Agreement Sunday Rates not paid will be provided upon the completion of discovery.

**F.5 Overtime Rate**

62. At all material times, cl 31.1(b) of the Chandler Macleod Agreement provided: “All time worked by 6 day or 7 day roster employees in excess of or outside the ordinary hours of work shall be paid for at the rate of double time.” (**Agreement Overtime Rate**).

**Particulars**

The reference to “double time” in cl 31.1(b) of the Chandler Macleod Agreement is to



be construed as double the rate otherwise payable to the Applicant for work during Agreement Ordinary Hours, which is the applicable Agreement Shift Loading Rate.

The Applicant only worked an Agreement Afternoon Shift or an Agreement Night Shift during Agreement Ordinary Hours.

The Agreement Overtime Rate is calculated as a rate of 200% of the applicable Agreement Shift Loading Rate for all hours worked in excess of or outside Agreement Ordinary Hours.

63. During the Applicant's Agreement Period, the Applicant worked at the Mine in excess of or outside Agreement Ordinary Hours.

#### **Particulars**

Particulars of the hours worked will be provided upon the completion of discovery.

64. By reason of the matters alleged in paragraphs 20, 62 and 63 above, Ready Workforce was required to pay the Applicant the Agreement Overtime Rate for the hours referred to in paragraph 63 above.

65. In contravention of cl 31.1(b) of the Chandler Macleod Agreement, Ready Workforce did not pay the Applicant the Agreement Overtime Rate for the hours referred to in paragraph 63 above, and only paid him the Agreement Ordinary Rate for those hours.

#### **Particulars**

Particulars of the calculation of the Agreement Overtime Rates not paid will be provided upon the completion of discovery.

### **F.6 Accrued Annual Leave**

66. At all material times, cl 32.10 of the Chandler Macleod Agreement provided: "An employee will be paid accrued but untaken annual leave on termination in accordance with the Fair Work Act. For the avoidance of doubt currently termination payments will include annual leave loading in accordance with clause 32.6."

67. As at the Termination Date, the Applicant had accrued annual leave pursuant to the Award and the Chandler Macleod Agreement (**Accrued Annual Leave**).

#### **Particulars**

The Applicant accrued annual leave pursuant to the Award during the Applicant's Award Period.



The Applicant accrued annual leave pursuant to the Chandler Macleod Agreement during the Applicant's Agreement Period.

The Applicant refers to and relies on cl 25.2 and 25.3 of the Award and cl 32.2 and 32.3 of the Chandler Macleod Agreement for the method of annual leave accrual.

Particulars of the Accrued Annual Leave will be provided upon the completion of discovery.

68. By reason of the matters alleged in paragraphs 14, 20, 66 and 67 above, as at the Termination Date, Chandler Macleod was required to pay the Applicant the Accrued Annual Leave (**Annual Leave Entitlement**).

**Particulars**

The Annual Leave Entitlement was to be paid at the greater of the rate in \_\_\_\_\_ cl 32.6(a) of the Chandler Macleod Agreement and the earnings in cl 32.6(b) of the Chandler Macleod Agreement.

Further particulars will be provided upon the completion of discovery.

69. In contravention of cl 32.10 of the Chandler Macleod Agreement, Ready Workforce did not, on or after the Termination Date, pay the Applicant the Annual Leave Entitlement.

**Particulars**

Particulars of the calculation of the Annual Leave Entitlement not paid will be provided upon completion of discovery.

**F.7 Termination Notice**

70. At all material times:

- (a) cl 18.1 of the Chandler Macleod Agreement provided that "*The Company*" will be required to give 2 weeks' notice of termination of employment to an employee who has had 1 year and up to the completion of 3 years of continuous service; and
- (b) cl 18.3 of the Chandler Macleod Agreement provided: "*Provided that employment may be terminated by payment of notice in lieu, part of the period of notice and part payment or forfeiture in lieu of notice. The amount of payment instead of notice must be at least the amount the Employee would have been paid if their employment continued to the end of the required period of notice.*"

71. The Applicant did not receive any notice of the Termination.



72. By reason of the matters alleged in paragraphs 14, 20, 70 and 71 above, as at the Termination Date, Ready Workforce was required to pay the Applicant in lieu of two weeks' notice of termination (**Termination Notice Entitlement**).

**Particulars**

Particulars of the calculation of the Termination Notice Entitlement will be provided upon completion of discovery.

73. In contravention of cll 18.1 and/or 18.3 of the Chandler Macleod Agreement, Ready Workforce did not, at or after the Termination Date, pay the Applicant the Termination Notice Entitlement.

**Particulars**

Particulars of the Termination Notice Entitlement not paid will be provided upon the completion of discovery.

**F.8 Accident Pay**

74. At all material times:

(a) cl 38.1 of the Chandler Macleod Agreement provided: "An employee in receipt of weekly payments under the provisions of applicable workers compensation legislation will be entitled to receive accident pay from the Company subject to the following conditions and limitations:"; and

(b) cl 38.2 of the Chandler Macleod Agreement provided: "Payment to be made during incapacity

An Company [sic] must pay, or cause to be paid, accident pay during the incapacity of the employee, within the meaning of the applicable workers compensation legislation:

(a) until such incapacity ceases; or

(b) until the expiration of a period of 78 weeks from the date of injury;

whichever event will first occur, even if the Company terminates the employee's employment within the period."

75. The Injury did not cease within the expiration of a period of 78 weeks from the Injury Date.

76. By reason of the matters alleged in paragraphs 20, 21, 74 and 75 above, Ready Workforce was required to pay accident pay to the Applicant until the expiration of a period of 78 weeks from the Injury Date (**Accident Pay Entitlement**).

**Particulars**





The Applicant refers to and relies on the method of calculation of accident pay in cl 38.3 of the Chandler Macleod Agreement.

Further particulars will be provided upon the completion of discovery.

77. In contravention of cl 38.1 and/or cl 38.2 of the Chandler Macleod Agreement, Ready Workforce did not pay the Applicant the Accident Pay Entitlement.

### **Particulars**

Particulars of the Accident Entitlement not paid will be provided upon the completion of discovery.

## **G. CONTRAVENING CONDUCT UNDER THE NATIONAL EMPLOYMENT STANDARDS IN RELATION TO APPLICANT: READY WORKFORCE**

### **G.1 NES Annual Leave**

78. Alternatively to the matters alleged in paragraphs 13, 14, 19 and 20 above, during the Applicant's Award Period and the Applicant's Agreement Period, the Applicant:

- (a) worked at the Mine pursuant to a roster / rosters which:
  - (i) was a long-term pre-determined roster; and
  - (ii) specified the days, times and hours which the Applicant was required to work during the day or at night in any seven-day period;
- (b) was not at liberty to vary his rosters or refuse shifts without completing a formal leave request providing reasons for his request;
- (c) was paid by Ready Workforce on a regular and periodic basis for his work at the Mine; and
- (d) by reason of one or more of the matters alleged in paragraphs 78(a) to 78(c) above, was an employee of Ready Workforce who was "other than casual" within the meaning of s 86 of the FWA.

79. By reason of the matters alleged in paragraphs 78 above, the Applicant:

- (a) accrued annual leave during his employment with Ready Workforce pursuant to s 87 of the FWA (NES Annual Leave); and

### **Particulars**

The Applicant was entitled to accrue five weeks of annual leave for each year of service with his employer pursuant to s 87(1)(b) of the FWA. The Applicant refers to



and relies on cl 25.2(b) of the Award and cl 32.2(b) of the Chandler Macleod Agreement, pursuant to which the Applicant was, as a seven-day roster employee, and as a result a shiftworker, entitled to an additional one week of annual leave.

- (b) as at the Termination Date was entitled pursuant to s 90 of the FWA to be paid the NES Annual Leave by Ready Workforce (NES Annual Leave Entitlement).

### **Particulars**

The Applicant refers to and relies on the definition of “base rate of pay” in s 16 of the FWA.

The reference to “base rate of pay” in s 90 of the FWA is to be construed as referring to the Agreement Ordinary Rate.

Pursuant to s 90 of the FWA, the NES Annual Leave Entitlement was to be calculated at the Agreement Ordinary Rate for all accrued hours of annual leave.

Further particulars will be provided upon the completion of discovery.

80. Alternatively to the matters alleged in paragraph 69 above, in contravention of s 90 of the FWA, Ready Workforce did not on or after the Termination Date pay the Applicant the NES Annual Leave Entitlement.

## **G.2 NES Termination Notice**

81. Alternatively to the matters alleged in paragraphs 13, 14, 19 and 20 above, during the Applicant’s Award Period and the Applicant’s Agreement Period, the Applicant was, by reason of one or more of the matters alleged in paragraphs 78(a) to 78(c) above, an employee of Ready Workforce who was not a “casual” within the meaning of s 123(1)(c) of the FWA.

82. By reason of the matters alleged in paragraphs 22, 71 and 81 above, the Applicant was, as at the Termination Date, entitled pursuant to s 117 of the FWA to be paid by Ready Workforce in lieu of two weeks of termination notice (NES Termination Notice Entitlement).

### **Particulars**

Pursuant to s 117 of the FWA, the Applicant was entitled to payment in lieu of notice of at least the amount Ready Workforce would have been liable to pay him at the full rate of pay for the hours he would have worked had his employment continued until the end of the minimum period of notice.

The “full rate of pay” in s 117 of the FWA is to be construed as referring to the Agreement Shift Loading Rates, the Agreement Saturday Rates, the Agreement Sunday



Rates, the Agreement Overtime Rates and the Agreement Holiday Rates that the Applicant would have been paid had his employment continued during the two weeks following the Termination Date.

The Applicant refers to and repeats the matters alleged in paragraphs 12 and 18 above.

Further particulars will be provided upon the completion of discovery.

83. Alternatively to the matters alleged in paragraph 73 above, in contravention of s 117 of the FWA, Ready Workforce did not, on or after the Termination Date, pay the Applicant the NES Termination Notice Entitlement.

**Particulars**

Particulars of the NES Termination Notice Entitlement not paid will be provided upon the completion of discovery.

**H. CONTRAVENING CONDUCT IN RELATION TO GROUP MEMBERS: READY WORKFORCE**

84. Each Group Member was, by reason of the matters alleged in:

- (a) paragraphs 15 to 17 above, entitled to be provided by Ready Workforce one or more of the entitlements specified in the Award (**Group Members' Award Entitlements**); and/or

**Particulars**

The Group Members' Award Entitlements included one or more of the entitlements alleged in Part E above in relation to the Applicant.

Further particulars of any Group Members' Award Entitlements other than the entitlements alleged in Part E above will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

- (b) paragraphs 23 to 25 above, entitled to be provided by Ready Workforce one or more of the entitlements specified in the Chandler Macleod Agreement (**Group Members' Agreement Entitlements**).

**Particulars**

The Group Members' Agreement Entitlements included one or more of the entitlements alleged in Part F above in relation to the Applicant.



Further particulars of any Group Members' Agreement Entitlements other than the entitlements alleged in Part F above will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

85. In contravention of the Award, Ready Workforce did not provide the Group Members' Award Entitlements.

**Particulars**

Particulars in relation to Group Members' claims will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

86. In contravention of the Chandler Macleod Agreement, Ready Workforce did not provide the Group Members' Agreement Entitlements.

**Particulars**

Particulars in relation to Group Members' claims will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

87. Alternatively to the matters alleged in paragraphs 16, 17, 24 and 25 above, during the Relevant Period, Group Members:

- (a) worked at the Mine in accordance with a roster / rosters which:
  - (i) were each a long-term pre-determined roster; and
  - (ii) specified the days, times and hours which the Group Members were required to work during the day or at night in any seven-day period;
- (b) were not at liberty to vary their rosters or refuse shifts without completing a formal leave request providing reasons for their request;
- (c) were paid by Ready Workforce on a regular and periodic basis for their work at the Mine; and
- (d) by reason of one or more of the matters alleged in paragraphs 87(a) to 87(c) above, were employees of Ready Workforce who were:
  - (i) "other than casual" within the meaning of s 86 of the FWA; and/or
  - (ii) not "casual" within the meaning of s 123(1)(c) of the FWA.



88. Alternatively to the matters alleged in paragraphs 84(a) and/or 84(b) above, during the Relevant Period, each of the Group Members were entitled to be provided by Ready Workforce one or more of the entitlements specified in the NES (Group Members' NES Entitlements).

**Particulars**

The Group Members' NES Entitlements included one or more of the entitlements alleged in Part G above in relation to the Applicant.

Further particulars of any Group Members' NES Entitlements other than the entitlements alleged in Part G above will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

89. Alternatively to the matters alleged in paragraphs 85 and/or 86 above, in contravention of the one or more of the provisions of the NES, Ready Workforce did not, during the Relevant Period, provide the Group Members' NES Entitlements.

**Particulars**

Particulars in relation to Group Members' claims will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

**I. CONTRAVENTIONS OF THE FWA**

**I.1 Applicant**

90. By reason of the matters alleged in:

- (a) paragraph 31 above;
- (b) paragraph 35 above;
- (c) paragraph 39 above;
- (d) paragraph 43 above; and/or
- (e) paragraph 47 above,

Ready Workforce contravened s 45 of the FWA with respect to the Applicant.

91. By reason of the matters alleged in:

- (a) paragraph 53 above;
- (b) paragraph 57 above;
- (c) paragraph 61 above;



- (d) paragraph 65 above;
- (e) paragraph 69 above;
- (f) paragraph 73 above; and/or
- (g) paragraph 77 above,

Ready Workforce contravened s 50 of the FWA with respect to the Applicant.

92. Alternatively to the matters alleged in paragraphs 90 and/or 91 above, by reason of the matters alleged in:

- (a) paragraph 80 above; and/or
- (b) paragraph 83 above;

Ready Workforce contravened s 44 of the FWA with respect to the Applicant.

## **I.2 Group Members**

93. By reason of the matters alleged in paragraph 85 above, Ready Workforce contravened s 45 of the FWA with respect to the Group Members.

94. By reason of the matters alleged in paragraph 86 above, Ready Workforce contravened s 50 of the FWA with respect to the Group Members.

95. Alternatively to the matters alleged in paragraphs 93 and/or 94 above, by reason of the matters alleged in paragraph 89 above, Ready Workforce contravened s 44 of the FWA with respect to the Group Members.

## **J. CONTRAVENING CONDUCT ON THE BASIS OF ACCESSORIAL LIABILITY: HVEC AND MT ARTHUR COAL**

96. Mt Arthur Coal knew during the Relevant Period that the Applicant and the Group Members were employed by Ready Workforce and worked at the Mine on the basis alleged in:

- (a) paragraphs 12, 13, 15, 16, 18, 19, 23 and 24 above; and/or
- (b) paragraphs 12, 15, 18, 23, 78(a) to 78(c) and 87(a) to 87(c) above.

### **Particulars**

- (i) Open Cut Examiners employed by Mt Arthur Coal at the Mine during the Relevant Period (**Relevant OCEs**), including Mr Alex Wells (**Mr Wells**):



- A. engaged in the following conduct within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA):
- a. managed the rosters pursuant to which the Applicant and the Group Members worked at the Mine;
  - b. received and managed leave requests by the Applicant and the Group Members, including by receiving and processing a “Chandler Macleod” document entitled Leave Notification Form (**Leave Notification Form**), which stated: “Please have your supervisor sign off on leave and then deposit into timesheet box or hand in to Chandler Macleod Singleton office”, and receiving requests for leave made by the Applicant and the Group Members by telephoning “Production 1” (which was a workgroup supervised by one of the Relevant OCEs, including Mr Wells); and
  - c. reviewed and approved, on a daily basis, the entries in the timesheets completed by the Applicant and the Group Members;
  - d. reviewed and approved, on a weekly basis, the weekly timesheets completed by the Applicant and the Group Members;
  - e. supervised and directed the day-to-day work of the Applicant and the Group Members at the Mine; and
  - f. received and managed notifications by the Applicant and the Group Members that the Applicant and the Group Members would be absent from work at the Mine, as evidenced by a “Chandler Macleod” document entitled “Frequently Asked Questions” (**FAQ Document**), which stated: “Please contact your Production Supervisor on site to let them know you will not be in” and “Please continue to have your timesheets signed off by your OCE and hand them in at the completion of your last shift for the week to be placed in the timesheet box in the OCE’s Office (Fishbowl)...”;
- B. it is to be inferred, by reason of engaging in the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members worked pursuant to the long-term, pre-determined rosters which specified the days, times and hours the



Applicant and the Group Members were required to work at the Mine, were not at liberty to vary shifts or refuse shifts, and were paid on a regular and periodic basis.

(ii) The General Manager of the Mine employed by Mt Arthur Coal during the Relevant Period (**General Manager**), including, between about August 2013 and about May 2016, Mr Xavier Wagner (**Mr Wagner**):

- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), supervised and directed the day-to-day work of the Applicant and the Group Members at the Mine;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members worked pursuant to the long-term, pre-determined rosters which specified the days, times and hours the Applicant and the Group Members were required to work at the Mine.

Further particulars, including the names of the Relevant OCEs and the General Manager other than Mr Wells and Mr Wagner, respectively, will be provided after the completion of discovery.

(iii) Employees of Mt Arthur Coal:

- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), during the Relevant Period accessed an electronic management system known as “Pegasus” which contained information about the start and finish times for each shift worked by the Applicant and the Group Members;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members worked pursuant to the long-term, pre-determined rosters which specified the days, times and hours the Applicant and the Group Members were required to work at the Mine.

Further particulars of the names and positions held by the employees of Mt Arthur Coal referred to at particular (iii) above will be provided after the completion of discovery.





97. Further, Mt Arthur Coal knew during the Relevant Period the days of the week, the times and the hours worked by the Applicant and Group Members at the Mine.

**Particulars**

The Applicant refers to and repeats the particulars to paragraph 96 above.

98. Further, Mt Arthur Coal knew during the Relevant Period:

(a) the terms of the Award;

**Particulars**

Mr David Murrie, employed as Head of Human Resources by Mt Arthur Coal:

(i) acting within the scope of his actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), in the course of Mt Arthur Coal's application for approval of the Mt Arthur Coal Enterprise Agreement 2011, on about 11 May 2011:

A. signed a statutory declaration entitled "Form F17 - Employer's Declaration in Support of Application for Approval of Enterprise Agreement" (Mt Arthur Coal Declaration);

B. referred at cl 3.1 of the Mt Arthur Coal Declaration to the "Black Coal Mining Industry Award 2010";

C. checked the box for "No" in answer to the question at cl 3.4 of the Mt Arthur Coal Declaration: "Does the agreement contain any terms or conditions of employment that are less beneficial than equivalent terms and conditions in the reference instrument(s) identified in questions 3.1 or 3.2?"; and

D. checked the box for "Yes" in answer to the question at cl. 3.5 of the Mt Arthur Coal Declaration: "Does the agreement contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the reference instrument(s) identified in questions 3.1 or 3.2?";

(ii) it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Award.



- (b) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.

### Particulars

(i) Relevant OCEs, including Mr Wells:

- A. were told by the Applicant and the Group Members, or some of them, on several occasions while the Relevant OCEs including Mr Wells, acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), supervised and directed the day-to-day work of the Applicant and the Group Members, that the Applicant and the Group Members were treated as “casual” by Ready Workforce;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.

Further particulars of the names of the Relevant OCEs other than Mr Wells will be provided after the completion of discovery.

(ii) Mr Wells:

- A. acting within the scope of his actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), had a conversation with the Applicant to the following effect while the Applicant was employed by Ready Workforce:
- a. Mr Wells told the Applicant to submit requests for any annual leave to him, and said words to the effect of: “Just give them to me and I’ll sign it and pass it onto dispatch and organise to get your shifts covered.”;
- b. the Applicant queried Mr Wells as to why he should do that as his employer treated him as a “casual”, and said words to the effect of: “Hang on, we are casual – why do we have to put in leave forms we are casuals – we don’t get annual leave?”; and



- c. Mr Wells responded with words to the effect of: “I need to know if you will work your shifts or not”.
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.
- (iii) Mr Redman:
- A. acting within the scope of his actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), said, in about September 2014, and no later than 27 September 2014, during a “change of shirt” meeting at the Mine, words to the effect of:
- “...The good news is that you can all have your jobs back, but with a new employer because TESA has lost the contract and Chandler Macleod has taken over the contract. If you want your jobs back here’s all the paperwork. The bad news is that you have to take a \$6.50 per hour pay cut.”;*
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant was to be paid, and the Group Members were paid, or were to be paid, on the basis of the hours they worked and were not paid any other entitlements.
- (iv) Employees of Mt Arthur Coal:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), engaged in the following conduct in about early 2013:
- a. took steps to ensure that the payments made to employees of Ready Workforce and TESA Mining (NSW) Pty Ltd (TESA Mining) for work at the Mine were the same; and
- b. caused the payments to employees of Ready Workforce for work at the Mine to be changed to become the same as the payments to employees of TESA Mining for work at the Mine;



- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Group Members, or some of them, were paid on the basis of the hours they worked and were not paid any other entitlements.
- (v) An employee of Mt Arthur Coal:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), said in about early 2013 to Mr Andrew Clive, an Account Manager at Ready Workforce, words to the effect that “BHP wanted the same pay rate between the two companies to keep it fair so no-one’s whinging”;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Group Members, or some of them, were paid on the basis of the hours they worked and were not paid any other entitlements.
- (vi) Employees of Mt Arthur Coal:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), in about mid-2014 undertook a review of the operating costs of the Mine and asked Ready Workforce to review its rates of pay for its employees at the Mine;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Group Members, or some of them, were paid on the basis of the hours they worked and were not paid any other entitlements.
- (vii) Employees of Mt Arthur Coal comprising the leadership team at the Mine, including the General Manager and all Managers at the Mine, among others:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), during the Relevant Period were engaged in making operational and strategic planning decisions at the Mine, including with respect to the cost of production;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members were paid on the basis of the hours they worked



and were not paid any other entitlements.

(viii) Employees of Mt Arthur Coal:

- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA):
  - a. in about January 2017 implemented an incentive scheme which applied to some employees of Ready Workforce who were treated as “casual” by Ready Workforce, pursuant to which eligible employees would receive a one-off payment of 60 hours after each continuous service period of six months; and
  - b. subsequently, in about 2017, paid one or more of the Group Members then employed to work at the Mine one-off payments which were equivalent to 60 hours at their ordinary rate of pay;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Group Members, or some of them, were paid on the basis of the hours they worked and were not paid any other entitlements.

Further particulars of the names and positions held by the employees of Mt Arthur Coal referred to at particulars (iv), (v), (vi), (vii) and (viii) above will be provided after the completion of discovery.

99. Mt Arthur Coal utilised the labour services of the Applicant and the Group Members to enable it to operate the Mine during the Relevant Period.

100. By reason of the matters alleged in paragraphs 96 to 99 above, Mt Arthur Coal was knowingly concerned within the meaning of s 550(2)(c) of the FWA in:

- (a) the contraventions by Ready Workforce of s 45 of FWA with respect to the Applicant alleged in paragraph 90 above;
- (b) the contraventions by Ready Workforce of s 50 of the FWA with respect to the Applicant alleged in paragraph 91 above;
- (c) alternatively to the matters alleged in paragraphs 100(a) and/or 100(b) above, the contraventions by Ready Workforce of s 44 of the FWA with respect to the Applicant alleged in paragraph 92 above;



- (d) the contraventions by Ready Workforce of s 45 of the FWA with respect to the Group Members alleged in paragraph 93 above; and
- (e) the contraventions by Ready Workforce of s 50 of the FWA with respect to the Group Members alleged in paragraph 94 above; and
- (f) alternatively to the matters alleged in paragraphs 100(d) and/or 100(e) above, the contraventions of s 44 of the FWA by Ready Workforce alleged in paragraph 95 above.

101. By reason of the matters alleged in paragraph 100 above, Mt Arthur Coal contravened:

- (a) s 45 of the FWA; and/or
- (b) s 50 of the FWA;
- (b) alternatively to the matters alleged in paragraphs 101(a) and/or 101(b) above, s 44 of the FWA.

with respect to the Applicant and the Group Members.

**K. CONTRAVENING CONDUCT ON THE BASIS OF ACCESSORIAL LIABILITY:  
CHANDLER MACLEOD GROUP**

102. Chandler Macleod Group knew during the Relevant Period that the Applicant and the Group Members were employed by Ready Workforce and worked at the Mine on the basis alleged in:

- (a) paragraphs 12, 13, 15, 16, 18, 19, 23 and 24 above; and/or
- (b) paragraphs 12, 15, 18, 23, 78(a) to 78(c) and 87(a) to 87(c) above.

**Particulars**

- (i) Ms Laura Lewis (**Ms Lewis**), Branch Manager, Singleton Branch, employed by Chandler Macleod Group:
  - A. in about September 2014, acting within the scope of her actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), offered employment on behalf of Ready Workforce to all persons then working for The TESA Group Pty Ltd (**TESA Group**) at the Mine, including the Applicant and some of the Group Members (the **Potential Ready Workforce Employees**), by letter signed by Ms Lewis and dated 1 September 2014 with attachments (**September 2014 Information Pack**);



- B. it is to be inferred that, by reason of engaging in the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the Applicant and the Potential Ready Workforce Employees would work pursuant to the long-term, pre-determined rosters which specified the days, times and hours the Applicant and the Potential Ready Workforce Employees would be required to work at the Mine, would not be at liberty to vary shifts or refuse shifts, and would be paid on a regular and periodic basis.
- (ii) Employees of Chandler Macleod Group, including Ms Lewis and Ms Phoebe Goddard (Ms Goddard), Team Leader, Staffing Services, Singleton Branch, employed by Chandler Macleod Group:
- A. during the Relevant Period, acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), managed and administered aspects of the employment of the Applicant and the Group Members, or some of them, by Ready Workforce, including by:
- a. collecting the timesheets completed by the Applicant and the Group Members, or some of them, from the Mine once or twice a week, as evidenced by the statement in the FAQ Document: “Timesheets are collected on site each Monday morning by 9am. You can hand your timesheet in before this time if you are on site. If not, please email your timesheet to [workforcehuntermacleod.com](mailto:workforcehuntermacleod.com) or call the office on 02 6571 4711 to make alternate arrangements. Pays are processed weekly on a Tuesday afternoon...”;
  - b. managing overtime shifts to be performed by the Applicant and the Group Members, or some of them;
  - c. offering additional shifts to the Applicant and the Group Members, or some of them;
  - d. processing requests for leave by the Applicant and the Group Members, or some of them;
  - e. notifying the Applicant and the Group Members, or some of them, of shift cancellations, as evidenced by the statement in the FAQ



- Document: “You will be notified via text message at least 2 hours prior to the commencement of your shift if you are not required to attend site. If you do not receive a text message, you are expected to attend your shift.”;
- f. receiving and managing notifications of absences from work by the Applicant and the Group Members, or some of them, as evidenced by the statement in the “Chandler Macleod Leave Guidelines” (Leave Guidelines Form): “4 hours [sic] notice required for any cancelled shifts. If more than 2 consecutive shifts are cancelled a doctor’s certificate confirming the requirement for you to be absent from work and when you will be fit for work must be provided”;
- g. processing payments to the Applicant and the Group Members for work performed at the Mine, as evidenced by the statement in the FAQ Document: “Depending on your bank’s processing time, pays will generally show in your account the following day. ... If your timesheet is handed in late, your pay will be processed on the next available day.”; and
- h. processing requests for leave, as evidenced by the statements in the Leave Notification Form: “PLEASE ENSURE YOU HAVE CALLED CHANDLER MACLEOD WITH YOUR LEAVE BEFORE SUBMITTING THIS FORM”; and “Please have your supervisor sign off on leave and then deposit into timesheet box or hand in to Chandler Macleod Singleton office” and the statement in the Leave Guidelines Form: “Chandler Macleod casual employees are entitled to take unpaid leave throughout the year. To enable Chandler Macleod to best service our clients, we require the following notice ...”;
- B. it is to be inferred that, by reason of engaging in the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the Applicant and the Group Members worked pursuant to the long-term, pre-determined rosters which specified the days, times and hours the Applicant and the Group Members were required to work at the Mine,





were not be at liberty to vary shifts or refuse shifts, and were paid on a regular and periodic basis.

Further particulars, including the names and positions of the Chandler Macleod Group employees other than Ms Lewis and Ms Goddard will be provided after the completion of discovery.

103. Further, Chandler Macleod Group knew during the Relevant Period the days of the week, the times and the hours worked by the Applicant and Group Members at the Mine.

**Particulars**

The Applicant refers to and repeats the particulars to paragraph 102 above.

104. Further, Chandler Macleod Group knew during the Relevant Period:

(a) the terms of the Award;

**Particulars**

(i) Ms Laura Cherry, Industrial Relations Adviser employed by Chandler Macleod Group;



- A. acting within the scope of her actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), in the course of Ready Workforce’s application for approval of the Chandler Macleod Gunnedah Basin Coal Mining Agreement 2014 (**Gunnedah Agreement**), in about August 2014 signed “Form 19 – Application for approval of a greenfields agreement”, in circumstances where the Award applied to the employees to be covered by the Gunnedah Agreement before its approval and the Award had been the subject of certain comparisons with the Gunnedah Agreement;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Award.
- (ii) Ms Tania Sinibaldi, Chief Operating Officer Staffing Services employed by Chandler Macleod Group:
- A. acting within the scope of her actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), on about 11 August 2014, signed the Gunnedah Agreement in circumstances where the Award applied to the employees to be covered by the Gunnedah Agreement before its approval, and the Award had been the subject of certain comparisons with the Gunnedah Agreement;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Award.
- (iii) Ms Tory Kakoschke (**Ms Kakoschke**), General Manager – Employee and Industrial Relations employed by Chandler Macleod Group:
- A. acting within the scope of her actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), in the course of Chandler Macleod Group’s application for approval of the Chandler Macleod Agreement, on about 13 May 2015:
- a. signed a statutory declaration entitled “Form 17 - Employer’s statutory declaration in support of an application for approval of an enterprise agreement” (**Chandler Macleod Declaration**);



- b. referred at cl 3.1 of the Chandler Macleod Declaration to the “Black Coal Mining Award” in answer to the question “List the modern award(s), if any, that currently cover the employer and any of the employees covered by this agreement”;
  - c. checked the box for “Yes” in answer to the question at cl 3.3 of the Chandler Macleod Declaration: “Are any of the classifications in the agreement different from the classifications in any of the reference instrument(s) listed in questions 3.1 and 3.2?”;
  - d. checked the box for “Yes” in answer to the question at cl 3.4 of the Chandler Macleod Declaration: “Does the agreement contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?”;
  - e. checked the box for “Yes” in answer to the question at cl.3.5 of the Chandler Macleod Declaration: “Does the agreement contain any terms or conditions of employment that are less beneficial than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?”; and
  - f. checked the box at cl 3.6 of the Chandler Macleod Declaration next to the statement: “I think the agreement does pass the better off overall test.”;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Award.

Further particulars will be provided after the completion of discovery.

- (b) the terms of the Chandler Macleod Agreement; and

**Particulars**

- (i) Ms Kakoschke:



- A. acting within the scope of her actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), engaged in the conduct alleged at paragraphs A(a)-(e) of particular (iii) above;
  - B. it is to be inferred, by reason of the conduct alleged in paragraphs A(a)-(e) of particular (iii) above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Chandler Macleod Agreement.
- (ii) Mr Adrian Button (**Mr Button**), Regional Manager – Newcastle & Hunter Valley employed by Chandler Macleod Group:
- A. acting within the scope of his actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), authored a letter from Chandler Macleod Group dated 10 June 2015 addressed to “Chandler Macleod employee” (**10 June 2015 Letter**), which stated, among other things: “*Your casual employment is covered by the terms and conditions of the Chandler Macleod Northern Districts of NSW Black Coal Mining Agreement 2015.*”;
  - B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Chandler Macleod Agreement.
- (iii) Employees of Chandler Macleod Group belonging to the “CMG Team” at the Singleton Branch of Chandler Macleod Group:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), in about June 2015 provided to the Applicant and the Group Members (then employed by Ready Workforce), a document entitled “Enterprise Agreement Process” which stated: “*We would like to confirm that the Chandler Macleod Northern Districts NSW Black Coal Mining Agreement 2015 (EA) was approved by the Fair Work Commission*” and set out “*changes to your current assignment*”;
  - B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) the terms of the Chandler Macleod Agreement.



Further particulars, including the names and positions of the employees belonging to the “CMG Team” will be provided after the completion of discovery.

- (c) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.

### **Particulars**

(i) Ms Lewis:

- A. acting within the scope of her actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), authored the letter dated 1 September 2014, forming part of the September 2014 Information Pack, which stated among other things: “If you apply and are accepted to commence work as a casual employee with Chandler Macleod, you will be offered a flat casual rate of either \$38 p/hour for working as part of the 8 hour crib roster, or \$40 p/hour as part of the 12.10 hour shift roster.”;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Potential Ready Workforce Employees would be paid on the basis of the hours they worked and would not be paid any other entitlements.

(ii) Mr Button:

- A. acting within the scope of his actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), authored the 10 June 2015 Letter, which, among other things, referred to: “Your gross rate of pay (excluding superannuation” which was stated to be “Crib Operator \$ 40.91 Hourly Flat rate”, “12.50 Hr Operator \$ 43.84 Hourly Flat rate”, “Unrostered OT Rate \$ 50.00” and which was stated to be “inclusive of any applicable casual loading, rostered overtime rates, penalty rates and allowances”;
- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA), from at least the date of the 10 June 2015 Letter, that the Applicant and the Group Members, or some of them, were paid on the basis of the hours they worked and were not paid any other entitlements.



- (iii) Employees of Chandler Macleod Group, including Ms Lewis and Ms Goddard:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), processed payments to the Applicant and the Group Members for work performed at the Mine;
  - B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.
- (iv) Employees of Chandler Macleod Group:
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), prepared and provided the Applicant and Group Members periodically and regularly with documents entitled “Pay Advice” (**Pay Advice**) that notified them, amongst other things of the following matters:
    - a. the period covered by the Pay Advice;
    - b. the hours worked by them;
    - c. the rate payable for the hours worked by them;
    - d. the net pay covered by the period in the Pay Advice, including the taxation deducted; and
    - e. the gross earnings and net pay for the financial year to the date of the Pay Advice.
  - B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.
- (v) Employees of Chandler Macleod Group, including Ms Kerren Fitzpatrick (**Ms Fitzpatrick**), National Payroll Manager employed by Chandler Macleod Group between about October 2013 and about May 2016 and a Mr Paul Sudweeks (**Mr Sudweeks**):
- A. acting within the scope of their actual or apparent authority (including within the meaning of s 793(1)(a) of the FWA), prepared and provided



the Applicant and Group Members with documents entitled “PAYG payment summary – individual non-business” that notified them, among other things, of their gross earnings for the preceding financial year:

- B. it is to be inferred, by reason of the conduct alleged above, knew (including for the purposes of s 793(2) of the FWA) that the Applicant and the Group Members were paid on the basis of the hours they worked and were not paid any other entitlements.

Further particulars, including the names and positions of the employees of Chandler Macleod Group other than Ms Lewis, Ms Goddard, Ms Fitzpatrick and Mr Sudweeks referred to in particulars (iii), (iv) and (v) above will be provided after the completion of discovery.

105. Chandler Macleod Group was engaged by HVEC to provide the labour services of the Applicant and the Group Members to work at the Mine during the Relevant Period.

106. By reason of the matters alleged in paragraphs 102 to 105 above, Chandler Macleod Group was knowingly concerned within the meaning of s 550(2)(c) of the FWA in:

- (a) the contraventions by Ready Workforce of s 45 of FWA with respect to the Applicant alleged in paragraph 90 above;
- (b) the contraventions by Ready Workforce of s 50 of the FWA with respect to the Applicant alleged in paragraph 91 above;
- (c) alternatively to the matters alleged in paragraphs 106(a) and/or 106(b) above, the contraventions by Ready Workforce of s 44 of the FWA with respect to the Applicant alleged in paragraph 92 above;
- (d) the contraventions by Ready Workforce of s 45 of the FWA with respect to the Group Members alleged in paragraph 93 above; and
- (e) the contraventions by Ready Workforce of s 50 of the FWA with respect to the Group Members alleged in paragraph 94 above; and
- (f) alternatively to the matters alleged in paragraphs 106(d) and/or 106(e) above, the contraventions of s 44 of the FWA by Ready Workforce alleged in paragraph 95 above.

107. By reason of the matters alleged in paragraph 106 above, Chandler Macleod Group contravened:

- (a) s 45 of the FWA; and/or



(b) s 50 of the FWA;

(b) alternatively to the matters alleged in paragraphs 107(a) and/or 107(b) above, s 44 of the FWA,

with respect to the Applicant and the Group Members.

## **L. MISLEADING REPRESENTATIONS AND CONTRAVENTIONS OF S 345 OF THE FWA**

### **L.1 Award Misrepresentation**

108. By the September 2014 Information Pack, Chandler Macleod Group represented to the Applicant and the Potential Ready Workforce Employees that they would each be a casual employee and would not be entitled to any of the entitlements available under the Award to full-time and part-time employees (**Award Entitlements**) if they became employed by Ready Workforce to work at the Mine (**Award Representation**).

#### **Particulars**

The Applicant relies upon the terms of the September 2014 Information Pack, including the statement: “If you apply and are accepted to commence work as a casual employee with Chandler Macleod, you will be offered a flat casual rate of either \$38 p/hour for working as part of the 8 hour crib roster, or \$40 p/hour as part of the 12.10 hour shift roster.”

The Award Representation is partly express and partly implied. To the extent that it is express, the Applicant refers to the terms of the September 2014 Information Pack. To the extent that it is implied, it is to be implied from the express terms of the September 2014 Information Pack.

109. The Award Entitlements were each a workplace right within the meaning of s 341 of the FWA.

110. The Award Representation was a misleading representation about the workplace rights of the Applicant and the Potential Ready Workforce Employees.

#### **Particulars**

The Applicant and the Potential Ready Workforce Employees would each not be a casual employee and would each be entitled to the Award Entitlements if they became employed by Ready Workforce to work at the Mine.





The Applicant refers to and repeats the matters alleged at paragraphs 13, 14, 16 and 17 above.

111. Chandler Macleod Group made the Award Representation:

- (a) not caring whether or not it was true;
- (b) by reason of paragraphs 111(a) above, recklessly.

**Particulars**

The Applicant refers to and repeats particular (i) to paragraph 102 above. At the time of the making of the Award Representation, Chandler Macleod Group knew that the Applicant and the Potential Ready Workforce Employees would be employed as described in paragraphs 13 and 16 above.

The Applicant refers to and repeats particulars (i) and (ii) to paragraph 104(a) above. At the time of making the Award Representation, Chandler Macleod Group knew the terms of the 10Award, including cl 10.1 of the Award.

112. By reason of the matters alleged in paragraphs 108 to 111 above, Chandler Macleod Group contravened s 345 of the FWA.

**L.2 Agreement Misrepresentation**

113. On or about mid-June 2015, Chandler Macleod Group sent the 10 June 2015 Letter to the Applicant and Group Members then working at the Mine, notifying them of the approval of the Chandler Macleod Agreement.

**Particulars**

A copy of the 10 June 2015 Letter is in the possession of the Applicant's solicitors and may be inspected by appointment.

114. By the 10 June 2015 Letter, Chandler Macleod Group represented to the Applicant and the Group Members then working at the Mine that they would each be a casual employee and not entitled to the entitlements available under the Chandler Macleod Agreement to full time and part time employees (**Agreement Entitlements**) if they continued to work for Ready Workforce at the Mine (**Agreement Representation**).

**Particulars**

The Agreement Representation is partly express and partly implied. To the extent that it is express, the Applicant refers to the terms of the 10 June 2015 Letter. To the extent that it is implied, it is to be implied from the express terms of the 10 June 2015 Letter.



115. The Agreement Entitlements were each a workplace right within the meaning of s 341 of the FWA.

116. The Agreement Representation was a misleading representation about the workplace rights of the Applicant and the Group Members then working at the Mine.

**Particulars**

The Applicant and the Group Members then working at the Mine would each not be a casual employee and would each be entitled to the Agreement Entitlements if they continued to work for Ready Workforce at the Mine.

The Applicant refers to and repeats the matters alleged in paragraphs 19 and 24 above.

117. Chandler Macleod Group made the Agreement Representation:

- (a) not caring whether or not it was true;
- (b) by reason of paragraphs 117(a) above, recklessly.

**Particulars**

The Applicant refers to and repeats the particulars to paragraph 102 above. At the time of the making of the Agreement Representation, Chandler Macleod Group knew that the Applicant and the Group Members then working at the Mine would be engaged by Ready Workforce as described in paragraphs 19 and 24 above.

The Applicant refers to and repeats particulars (i) and (ii) to paragraph 104(b) above. At the time of making the Agreement Representation, Chandler Macleod Group knew the terms of the Chandler Macleod Agreement.

118. By reason of the matters alleged in paragraphs 113 to 117 above, Chandler Macleod Group contravened s 345 of the FWA.

**M. FAILURE TO PAY FOR HOURS WORKED**

119. By reason of the matters alleged in paragraphs 1(b), 1(bb), 1(c)(ii)(A), 1(c)(ii)(B), 3(c), 3(d), 12, 15, 18 and 23 above, during the Relevant Period, the Applicant and the Group Members were entitled to be paid by Ready Workforce for all hours worked at the Mine:

**Particulars**

The Applicant and the Group Members were entitled to be paid for all hours worked at the Mine pursuant to one of the rates referred to in paragraphs 28, 32, 36, 40, 44, 50, 54, 58 and 62 above.



Alternatively, the Applicant and the Group Members were entitled to be paid for all hours worked pursuant to the Award Ordinary Rate and/or the Agreement Ordinary Rate.

120. The Applicant and the Group Members, or some of them, performed work at the Mine during the Relevant Period for which they were not paid by Ready Workforce.

**Particulars**

The Applicant and the Group Members, or some of them, were required by Ready Workforce to attend regular “toolbox” talks at the Mine which took place outside rostered hours. Ready Workforce did not pay the Applicant or the Group Members who attended these “toolbox” talks for the time spent by the Applicant and those Group Members at such meetings.

Particulars of the calculations of the time worked by the Applicant and the Group Members, or some of them, by reason of their attendance at the Ready Workforce “toolbox” talks which was not paid for by Ready Workforce will be provided upon the completion of discovery.

121. By reason of the matters alleged in paragraphs 119 and 120 above, Ready Workforce has:

- (a) contravened one or more of cll 21.2, 22.2 and/or 27.4(a) of the Award; and/or
- (b) contravened one or more of cll 26.2, 27.2 and/or 31.1(b) of the Chandler Macleod Agreement; or
- (c) alternatively to the matters alleged in paragraph 121(b) above, contravened cll 10.4 of the Chandler Macleod Agreement.

122. By reason of the matters alleged in:

- (a) paragraph 121(a) above, Ready Workforce contravened s 45 of the FWA with respect to the Applicant and the Group Members, or some of them; and/or
- (b) paragraphs 121(b) or 121(c) above, Ready Workforce contravened s 50 of the FWA with respect to the Applicant and the Group Members, or some of them.

**N. LOSS OR DAMAGE**

123. The contraventions of:

- (a) s 45 of the FWA; and/or
- (b) s 50 of the FWA;



(c) alternatively to paragraphs 123(a) and/or 123(b) above, s 44 of the FWA, by Ready Workforce, Mt Arthur Coal and/or Chandler Macleod Group with respect to the Applicant referred to in this amended statement of claim caused the Applicant loss or damage.

**Particulars**

The Applicant will provide particulars upon the completion of discovery.

124. The contraventions of:

(a) s 45 of the FWA; and/or

(b) s 50 of the FWA;

(c) alternatively to paragraphs 124(a) and/or 124(b) above, s 44 of the FWA,

by Ready Workforce, Mt Arthur Coal and/or Chandler Macleod Group with respect to the Group Members referred to in this amended statement of claim caused the Group Members loss or damage.

**Particulars**

Particulars in relation to Group Members' loss or damage will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

**O. REMEDIES**

125. The Applicant claims on his own behalf and on behalf Group Members the relief set out in the Amended Originating Application.

This pleading was prepared by ~~Terrence Lynch SC~~ Richard Attiwill QC, Guy Donnellan and ~~Luey Saunders~~ Eugenia Levine of Counsel, and ~~Rory Markham~~, lawyer.

Date: ~~December 6 June~~ 2018

Signed by Rory Markham

Lawyer for the Applicant



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**Certificate of lawyer**

I Rory Markham certify to the Court that, in relation to the amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~December~~26 June 2018

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Signed by Rory Markham

Lawyer for the Applicant



**Schedule**

No. ACD47 of 2018

Federal Court of Australia  
District Registry: Australian Capital Territory  
Division: Fair Work Division

**Respondents**

Second Respondent: ~~\_\_\_\_\_~~ **Hunter Valley Energy Coal Pty Ltd (ACN 062 894 464)**

~~Third~~ Second Respondent: **Mt Arthur Coal Pty Limited Ltd (ACN 000 181 902)**

Third Respondent: **Chandler Macleod Group Limited (ACN 090 555 052)**

Date: December 26 ~~June~~ 2018